

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 303 Regulation of Real Estate Appraisers & Appraisal Management Companies
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee; Hudson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1552

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|------------------|----------------|-----------------------|
| 1) | Insurance, Business & Financial Affairs Policy Committee | 11 Y, 1 N, As CS | Lowrance | Cooper |
| 2) | Government Operations Appropriations Committee | | | |
| 3) | General Government Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

Individual real estate appraisers are currently regulated by the Department of Business and Professional Regulation (DBPR) under ch. 475 (Part II), F.S. Appraisers are subject to application requirements, qualifications for licensure, and disciplinary actions and penalties related to performing appraisals. Individual appraisers must also comply with the Uniform Standards of Professional Appraisal Practice (USPAP).

In response to inflated appraisals from 2005-2007, the New York State Attorney General, the Federal Housing Finance Agency (FHFA), Fannie Mae, and Freddie Mac designed the Home Valuation Code of Conduct (HVCC). The HVCC was established to insulate lenders from the appraisal process in an effort to prevent their improper influence on the independent appraiser's decision-making. The implementation of the HVCC has led to the increased use of appraisal management companies (AMCs) as a mechanism to separate the functions of lenders and appraisers. AMCs are business entities that administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. AMCs are not currently regulated by state law.

The bill amends Chapter 475 (Part II), Florida Statutes, to require regulation of AMCs. The DBPR will be required to develop an additional license type for the registration of AMCs. The bill describes the application requirements (including background checks), qualifications for registration, and standards for disciplinary actions and penalties related to AMCs.

The bill also revises the requirements for the retention of appraisal records, gives authority to the Florida Real Estate Appraisal Board to adopt rules to institute requirements for the protection of appraisers' signatures, and sets minimum fees for the application, registration and renewal of AMCs.

According to the DBPR, the bill will generate initial revenue of \$318,500 from 2010-2011, and \$213,500 from 2012-13; this calculation is based on biennial registration, application, and unregistered activity fees. The DBPR estimates a total recurring fee of \$25,262 will be needed to establish a half-time Regulatory Specialist II position and a recurring cost of \$23,323 thereafter.

The effective date of the bill is July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Real estate appraisers are specialists in estimating the value of real property. Appraisals are made when property is bought, sold, assessed, taxed, condemned, insured, or mortgaged.¹ Real estate appraisers prepare a written description of the property and make an estimate of its value. They obtain land values from county sources and sales information about nearby properties.² Appraisers estimate building replacement costs using building valuation manuals and professional cost estimators. They also verify legal descriptions of property by county records, measure the property and compare the measurements with the legal descriptions. They draw land diagrams and note conditions and special features of buildings. Appraisers analyze and evaluate the data and prepare a written report outlining methods by which the fair-market value was estimated.³

Individual real estate appraisers are currently regulated under ch. 475 (Part II), F.S. Appraisers are subject to application requirements (including background checks)⁴, qualifications for licensure⁵, and standards for disciplinary actions and penalties related to performing appraisals.⁶ Individual appraisers must also comply with the Uniform Standards of Professional Appraisal Practice (USPAP).⁷

Typically, an appraiser receives an order from a real estate agent, lender, or mortgage broker to inspect a property. Based on an inspection of the home and comparable sales in the area, they develop an estimated value for the property.⁸ That figure is used by banks to set the home's value as collateral for the mortgage loan. Appraisers are supposed arrive at a value that is free from improper influence.

¹ U.S. Department of Labor, Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition.

<http://www.bls.gov/oco/ocos300.htm>

² *Id.*

³ *Id.*

⁴ Section 475.615, F.S.

⁵ Section 475.616, F.S.; Section 475.617, F.S.

⁶ Section 475.624, F.S.; Section 475.626, F.S.

⁷ Section 475.615(5), F.S.

⁸ U.S. Department of Labor; <http://www.bls.gov/oco/ocos300.htm>

However, during the 2005-2007 real estate boom, pressure was placed on real estate appraisers to inflate home values—sometimes to prices in support of loans that were more than buyers could afford.⁹ Unrealistically high appraisals hurt homebuyers as well as investors.¹⁰ In response, the New York State Attorney General, the Federal Housing Finance Agency (FHFA), Fannie Mae, and Freddie Mac designed the Home Valuation Code of Conduct (HVCC) to provide added protections for homebuyers, mortgage investors, and the housing market. It establishes standards for solicitation, selection, compensation, conflicts of interest and appraiser independence. Simply, the HVCC was established to insulate lenders from the appraisal process in an effort to eliminate their “influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, [or] bribery.”¹¹ As of May 1, 2009, Freddie Mac and Fannie Mae no longer purchase mortgages from sellers that do not adopt the HVCC.

The implementation of the HVCC and the need to ensure that appraisers remain an independent third-party in the valuation process has resulted in an outsourcing of appraisal functions by many financial institutions to appraisal management companies (AMCs).¹² AMCs are business entities that administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. AMCs are not currently regulated by state law.

On October 8, 2009, the Appraisal Institute, a global membership association of professional real estate appraisers, proposed a model act to register and regulate AMCs.¹³ The model was developed by the Appraisal Institute, the American Society of Appraisers, the American Society of Farm Managers and Rural Appraisers, and the National Association of Independent Fee Appraisers. Laws based upon the model have recently been enacted in Arkansas, Louisiana, Nevada, California, New Mexico, and Utah.

When considering the regulation of a previously unregulated profession or occupation, s. 11.62, F.S., the “Sunrise Act” sets forth the framework for the legislative review. Specifically, the Sunrise Act provides the intent of the Legislature “that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose.” The act also provides that no profession or occupation be regulated in a manner that unnecessarily restricts entry into the profession or occupation or adversely affects the availability of the professional or occupational services to the public. Subsection (3) of the Sunrise Act requires the Legislature to consider five factors in determining whether to regulate a profession or occupation:

- (a) Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- (b) Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- (c) Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- (d) Whether the public is or can be effectively protected by other means; and
- (e) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

⁹ See Federal Housing Finance Agency (FHFA) July 22, 2009 Notice. “Strengthening Appraiser Independence and Improving the Valuation Process. Update on Enterprise Implementation of the Home Valuation Code of Conduct.” FHFA was created by the Housing and Economic Recovery Act of 2008. www.fhfa.gov/webfiles/14611/hvcc_NOTICE_7-22-09F.pdf

¹⁰ See Florida Real Estate Appraisal Boards disciplinary actions against individual appraisers at <http://www.myfloridalicense.com/dbpr/re/FREABDARs.html>

¹¹ See HVCC Section I(B) at http://www.freddie.com/singlefamily/home_valuation.html

¹² See National Association of Realtors Regulatory Issue Brief

¹³ See www.appraisalinstitute.org/newsadvocacy/downloads/modelprovisionsAMC.pdf

Effect of Bill

DEFINITIONS

The bill adds the definitions of appraisal management company (AMC), appraisal management services, appraisal panel, client, and signature.

APPLICANT REQUIREMENTS

Who Must Register:

No person shall engage in appraisal management services or represent themselves as appraisal management companies or title similar in meaning unless the person is registered with the Department of Business and Professional Regulation as an appraisal management company. However, the bill does not require an employee of an AMC to obtain a separate registration.

Competency

The bill requires that each person listed in the application be competent and qualified to engage in appraisal management services. The bill provides that any person listed will not be qualified if:

- 1) The person has been denied registration, licensure, or certification as an appraiser;
- 2) The person has been disbarred;
- 3) The person's registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, nation, possession, or district of the US, or any court or lawful agency thereof because of any conduct or practices that would have warranted a like result;
- 4) The person has been guilty of conduct or practices in this state or elsewhere that would have been grounds for disciplining his/her registration, license, or certification as a registered trainee appraiser or a licensed or certified appraiser.

Any person disqualified for the above listed reasons can be found qualified if the board determines that because of lapse of time, subsequent good conduct and reputation, or any other reason deemed sufficient, the granting of the registration is not likely to endanger the public interest.

Affiliation

The bill specifies that no applicant shall be rejected solely on the basis of whether any person listed or any employee of the company is a member or is not a member of a particular appraisal organization.

APPLICATION PROCESS

Minimum Requirements

An application must be submitted in a format designed by the department. According to the bill the application must, at a minimum, include:

- 1) The firm or business name. The AMC must notify the department of any name changes within 10 days.
- 2) The mailing address, street address, and telephone number of the AMC's principal location. The AMC must notify the department of any changes in the mailing or street address within 10 days.
- 3) The AMC's federal employer identification number.
- 4) The AMC's type of business organization: corporation, partnership, limited liability company, or sole proprietorship.
- 5) If the AMC is incorporated, a statement indicating whether the AMC is foreign or domestic, date of incorporation, state incorporated, charter number, and if the AMC is a foreign corporation, the date that the corporation first registered with the Department of State to conduct business in this state.
- 6) The full name, street address, telephone number, corporate title, social security number or federal employer identification number of any person who possesses the authority to direct the management or policies of the AMC, including but not limited to:
 - (a) Each officer or director if the AMC is a corporation

- (b) Each general partner if the AMC is a partnership
 - (c) Each manager or managing member if the AMC is a limited liability company
 - (d) The owner if the AMC is a sole proprietorship
 - (e) Each person who, directly or indirectly, owns or controls 10% or more of an ownership interest in the AMC.
- 7) The name of any firm or business under which any of the listed above conducted business as an AMC within the 5 years preceding the date of application.
- 8) The AMC's registered agent for service of process in this state.

Filing Fees & Fingerprints

Appropriate fees and a set of fingerprints for each person listed in the application must accompany all applications. The initial application fee for appraisal management companies may not exceed \$150 and the initial registration and registration renewal fee may not exceed \$150 each year. The bill provides that the fingerprints must be sent to the Division of Criminal Justice Information Systems within the Department of Law Enforcement and the FBI to determine whether the person has a criminal history record. The bill requires that the information obtained be sent to the department for determination whether the AMC is statutorily qualified for registration.

USPAP Pledge

At the time of filing an application for registration of an AMC, each person listed in the application must sign a pledge to comply with the Uniform Standards of Professional Appraisal Practice and must indicate in writing that he/she understands the types of misconduct that are subject to disciplinary proceedings. The bill provides that the application will expire 1 year after the date received.

Non-Florida Resident Applicants

The bill requires that any applicant who is not a Florida resident must file an irrevocable consent that indicates suits and actions may be commenced in any county in Florida that the plaintiff resides and that service of any process or pleadings may be made by delivering the process or pleading to the director of the Division of Real Estate by certified mail, return receipt requested. Service of process is also to be delivered by registered mail to the AMC's principal business location or to the AMC's registered agent if the AMC's principal business location is within Florida. The bill specifies that the service is valid and binding upon the AMC as if it was filed in Florida within the jurisdiction of the court in which the suit or action is filed. The bill further specifies that the irrevocable consent must be in a form designated by the department and signed before a notary.

Renewal

The bill provides that the department shall renew the registration of an AMC upon receipt of the renewal application and designated fee. The bill also provides that at least every 4 years, the department shall adopt rules establishing a procedure for renewal of the registration of an AMC.

DISCIPLINARY ACTION

AMCs are to be among the entities subject to disciplinary actions under s. 475.624, F.S. and penalties under s. 475.626, F.S.

The bill further provides that disciplinary action may be taken against AMCs under the following circumstances:

- 1) AMC has failed to timely notify the department of any change in principal business location.
- 2) AMC has altered, modified, or otherwise changed a completed appraisal report.
- 3) AMC has employed, contracted with, or otherwise retained an appraiser whose registration, license, or certification is suspended or revoked to perform appraisal services or appraisal management services.
- 4) AMC has influenced or attempted to influence the development, reporting, or review of an appraisal through:
 - (a) Coercion, extortion, collusion, compensation, inducement, intimidation, bribery;
 - (b) Withholding or threatening to withhold timely payment for an appraisal
 - (c) Withholding or threatening to withhold future business from an appraiser

- (d) Expressly or impliedly promising future business, promotions, or increased compensation for an appraiser
- (e) Conditioning a request for appraisal services or the payment of an appraisal fee, salary, bonus upon the opinion, conclusion, or valuation to be reached or upon a preliminary estimate or opinion requested from an appraiser.
- (f) Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of appraisal services.
- (g) Providing an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.
- (h) Providing an appraiser or relative to the appraiser stock or other financial or nonfinancial benefits.
- (i) Allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser.
- (j) Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is issued pursuant to a bona fide prefunding or postfunding appraisal review or quality control process.
- (k) Any other act that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

The bill provides that an AMC is not prohibited from requesting that an appraiser provide additional information about the basis of a valuation, including consideration of additional comparable data, or that the appraiser correct objective factual errors in an appraisal report.

The board may reprimand, conditionally or unconditionally suspend or revoke any registration, or impose administrative fines not to exceed \$5,000 for each count or offense against an AMC if the board determines that the AMC is attempting to perform, has performed, or has attempted to 1) perform any act in violation of this part, 2) violate of any rule adopted by the board under this part, or 3) obtain an AMC registration by fraud, misrepresentation, or deceit.

AUTHENTICATION & RECORDS

The bill requires the Florida Real Estate Appraisal Board to promulgate rules specifying how an appraiser's signature is to be affixed to an appraisal to ensure the protection and authentication of the appraiser's signature.

AMCs become subject to the retention of records provisions under 475.629 under this bill. The statute would be revised to require retention for a period of 5 years or according to the Uniform Standards of Professional Appraisal Practice (USPAP), whichever is greater. These records include original or true copies of any contracts engaging the AMC's services, appraisal reports, and supporting data assembled and formulated by the company in preparing appraisal reports or engaging in appraisal management services. The bill further specifies that the period for retention of the records runs from the date of the submission of the appraisal report to the client, except as otherwise specified in the USPAP.

The records must be made available by the AMC for inspection and copying by the department upon reasonable notice to the company. The department, however, shall not inspect or copy the records of an AMC unless the records are necessary to facilitate a pending investigation or complaint. If an appraisal has been the subject or has served as evidence for litigation, reports and records must be retained for at least 2 years after the trial or the period specified in the USPAP, whichever is greater.

Provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 475.611 to include AMCs, appraisal management services, appraisal panel, client, and signature in the definitions.

Section 2: Amends s. 475.614 to require board to adopt rules to protect signature

Section 3: Amends s. 475.617 to provide maximum fees for AMCs.

Section 4: Creates s. 475.6235 requiring registration of appraisal management companies.

Section 5: Amends s. 475.624 to provide disciplinary requirements for AMCs.

Section 6: Amends s. 475.626 to apply penalties for violations to AMCs.

Section 7: Amends s. 475.629-to require record retention for AMCs.

Section 8: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the DBPR, it is estimated that 700 appraisal management companies will apply and be registered. Registration will be biennial. The application fee will be \$150, the registration and renewal fee will be \$150 per year and the unregistered activity fee will be \$5 per applicant. See *Fiscal Comments* below.

2. Expenditures:

According to the DBPR, approximately 700 AMC applications will need to be processed by the Applications and Revenue staff. Calculating the time spent for each function (including second reviews and registration renewals) a total of .61 FTE additional staff will be required to accomplish the workload. Therefore, a half-time Regulatory Specialist II position will be needed to perform the added duties. A total recurring fee of \$25,262 will be needed the first year to establish the position and a recurring cost of \$23,323 thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

AMCs will incur costs associated with the application, registration, fingerprinting, and possibly for unregistered activity.

D. FISCAL COMMENTS:

Revenue Impact:

Estimate of 700 AMC registrations with initial application fee of \$150 and registration fee of \$150 per year. Registration renewals estimate at \$150 for each year of renewal. Registration (initial and renewal) is biennial.

| | FY 2010-11 | FY 2011-12 | FY 2012-13 |
|---------------------------|------------|------------|------------|
| Application Fee | \$105,000 | \$0 | \$210,000 |
| Registration Fee | \$210,000 | \$0 | \$0 |
| Unregistered Activity Fee | \$3,500 | \$0 | \$3,500 |
| TOTAL: | \$318,500 | \$0 | \$213,500 |

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

Extensive rulemaking would be required by the Florida Real Estate Appraisal Board working in collaboration with the Division of Real Estate and the Attorney General's office. According to the DBPR the bill provides adequate rulemaking authorization and provides sufficient guidance to the agency to promulgate rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, the Insurance, Business and Financial Affairs Policy Committee met, adopted a strike-all amendment, and passed the bill as a Committee Substitute. The strike-all differed from the bill as filed in the following areas:

- Removed provisions from the bill which exempted certain entities from regulation as appraisal management companies.
- Removed the requirement for applicants to provide a fingerprint card and replaced it with a requirement that all applicants must provide fingerprints.
- Clarified provisions relating to the designation of a registered agent for service of process.
- Modified the bill's disciplinary provisions regarding appraisers or appraisal management companies by removing the act of instruction as an offense as well as the acts of demoting, terminating, or threatening to demote or terminate an appraiser.
- Rectified a conflict in the bill which provided different administrative fines for violations and made the fine consistent with fines authorized for other businesses and professions regulated by DBPR.
- Clarified the authorization provided in the bill for requesting additional comparable data from an appraiser.
- Conditioned the authority of DBPR to inspect or copy records to those instances involving a pending investigation or complaint.